

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT)
OF BRUCE OAKLEY, INC. and)
JOHNSTON’S PORT 33 INC., OWNERS)
OF THE M/V LEGACY FOR)
EXONERATION FROM, OR) Civil Action No. 19-CV-184-RAW
LIMITATION OF, LIABILITY.)
) In Admiralty
)

CLAIM AND ANSWER OF THE UNITED STATES OF AMERICA UNDER RULE F
OF THE SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS

COMES NOW, The United States of America, pursuant to Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, as well as the Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401-476, and general maritime law, and submits this Claim and Answer to the above-captioned petition of Bruce Oakley, Inc., and Johnston’s Port 33 Inc. under 46 U.S.C. §30505 *et seq.*, as follows:

JURISDICTION AND VENUE

1. This is an admiralty claim and answer within the meaning of Rule F of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (“Rule F”), and Federal Rule of Civil Procedure 9(h) and 28 U.S.C. §1331 (giving district courts original jurisdiction of admiralty or maritime cases).

2. This claim is brought by the United States pursuant to Rule F and the Rivers and Harbors Act of 1899 (“RHA”), 33 U.S.C. §§ 401-476, and general maritime law.

3. The United States is authorized to bring this suit by Rule F, 28 U.S.C. § 1345, the RHA, 33 U.S.C. § 413, and general maritime law.

4. This Honorable Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331, 1333, and 1345.

5. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) because it is the judicial district in which a substantial part of the events giving rise to this cause of action occurred.

PARTIES

6. Plaintiff United States is a sovereign nation authorized to sue under 28 U.S.C. § 1345 (United States as plaintiff). The United States Army Corps of Engineers is an agency of the United States.

7. At all material times, the United States was and still is the owner and operator, through its agency the United States Army Corps of Engineers, of Webber Falls Lock and Dam No. 16, located at or near mile marker 366.6 on the McClellan-Kerr Arkansas River Navigation System (the “Arkansas River”), near Muskogee, Oklahoma. Webbers Falls Lock and Dam No. 16 is a public work built and maintained for the preservation and improvement of the navigable waters of the United States within the meaning of the RHA, 33 U.S.C. § 408.

8. At all material times, Bruce Oakley, Inc. and Johnston’s Port 33 Inc.: (a) were corporations engaged in the carriage of goods upon water for hire; (b) did operate and still operate in the United States; and (c) did business within the Eastern District of Oklahoma.

9. At all material times, the M/V LEGACY: (a) was operated by Bruce Oakley, Inc. and/or Johnston’s Port 33 Inc.; (b) was owned by Bruce Oakley, Inc. and Johnston’s Port 33 Inc.; (c) was a merchant vessel used to transport cargo and move barges on the inland waters of the United States; and (d) was a vessel “used and employed” within the meaning of the RHA, 33 U.S.C. § 412.

10. At all material times, barge MTC 7255 (a/k/a MTC 7256) was a barge: (a) owned by Marquette Transportation Company and/or Bruce Oakley, Inc. and/or Mizuho America Leasing LLC; and (b) operated by Bruce Oakley, Inc. and/or Johnston's Port 33 Inc., in tow of the M/V LEGACY; and (c) used to transport cargo on the inland waters of the United States.

11. At all material times, barge LTD 11140 (a/k/a TLD 11140) was a barge: (a) owned by Marquette Transportation Company and/or Bruce Oakley, Inc. and/or East West Bank of Alpharetta, Georgia; and (b) operated by Bruce Oakley, Inc. and/or Johnston's Port 33 Inc., in tow of the M/V LEGACY; and (c) used to transport cargo on the inland waters of the United States.

FACTS

12. Upon information and belief, on or about May 21, 2019, the National Oceanic and Atmospheric Administration ("NOAA") forecast severe flooding on the Arkansas River near Muskogee.

13. On or about May 22, 2019, barges MTC 7255 and LTD 11140, both loaded with Diammonium Phosphate, were tied together and located at or near the Oakley barge terminal at or near Muskogee, Oklahoma. Still tied together, the two barges came unmoored and made an uncontrolled decent down the Arkansas River toward the Webbers Falls Lock and Dam No. 16.

14. On May 23, 2019, both barges struck the Webbers Falls dam, obstructing and damaging dam gates 7 through 10. Damage to the dam visible above the water line has occurred. Damage to the dam below the waterline also is believed to have occurred,

however further investigation is required to ascertain the nature and extent of all of the damage.

15. The United States will incur costs in an as-yet-unknown amount to repair the damage to Webbers Falls Lock and Dam No. 16 caused by the barge MTL 7255 and the barge LTD 11140, over which the M/V LEGACY failed to maintain control. Bruce Oakley, Inc., in coordination with the Army Corps of Engineers, has conducted repair work at the Webbers Falls Lock and Dam in an effort to mitigate the damage thereto.

UNITED STATES' ANSWER TO LIMITATION PETITION OF BRUCE OAKLEY, INC. AND JOHNSTON'S PORT 33 INC.

16. The United States, for its answer to the exoneration or limitation petition filed by Bruce Oakley, Inc. and Johnston's Port 33, Inc. on behalf of their vessel M/V LEGACY, avers:

- A. The jurisdictional allegations in paragraph 1 are admitted.
- B. The allegations of paragraph 2 are admitted.
- C. The allegations of paragraph 3 are admitted.
- D. The allegations of paragraph 4 are admitted.
- E. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 5.
- F. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 6.
- G. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 7.
- H. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 8.

- I. The allegations of paragraph 9 are admitted.
- J. The allegations of paragraph 10 are admitted.
- K. The allegations of paragraph 11 are admitted.
- L. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 12.
- M. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 13.
- N. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 14.
- O. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 15.
- P. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 16.
- Q. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 17.
- R. The allegations of paragraph 18 are admitted.
- S. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 19.
- T. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 20.
- U. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 21.

V. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 22.

W. Paragraph 23 contains allegations of fact and law that do not require an answer. To the extent that an answer is required, the legal assertions are denied and the United States lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations.

X. Paragraph 24 contains allegations of fact and law that do not require an answer. To the extent that an answer is required, the legal assertions are denied and the United States lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations.

Y. Paragraph 25 contains allegations of fact and law that do not require an answer. To the extent that an answer is required, the legal assertions are denied and the United States lacks sufficient knowledge or information to form a belief as to the truth of the factual allegations.

Z. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 26.

AA. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 27.

BB. Paragraph 28 contains legal assertions that do not require an answer. To the extent that an answer is required, they are denied.

CC. Paragraph 29 contains legal assertions that do not require an answer.

DD. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 30.

EE. The United States lacks sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 31.

17. By way of further answer, the United States:

a. Denies that Bruce Oakley, Inc. and Johnston's Port 33 Inc. were without privity and knowledge of the losses and damage caused in this matter;

b. Denies that Bruce Oakley, Inc. and Johnston's Port 33 Inc. should be exonerated from liability in this matter;

c. Denies that Bruce Oakley, Inc. and Johnston's Port 33 Inc. are entitled to limitation in this matter;

d. Denies that Bruce Oakley, Inc. and Johnston's Port 33 Inc. are entitled to an injunction in this matter; and

e. Denies that Bruce Oakley, Inc. and Johnston's Port 33 Inc. should be awarded any relief.

CLAIM, COUNT ONE: VIOLATIONS OF THE RIVERS AND HARBORS ACT

18. The United States incorporates by reference paragraphs 1 through 17 of this claim.

19. Bruce Oakley Inc. and/or Johnston's Port 33 Inc., as operator of the M/V LEGACY and barges MTC 7255 and LTD 11140, are "persons" within the meaning of the RHA, as amended, 33 U.S.C. § 408.

20. The Arkansas River in the vicinity of Webbers Falls Lock and Dam No. 16 is a navigable water of the United States within the meaning of 33 U.S.C. § 408.

21. Webbers Falls Lock and Dam No. 16 is a public work built and maintained for the preservation and improvement of the navigable waters of the United States within the meaning of 33 U.S.C. § 408.

22. The RHA, 33 U.S.C. § 408, makes it unlawful to damage any structure of the United States that is used for the preservation of navigation.

23. Under the RHA, 33 U.S.C. §§ 408 and 412, the defendants are strictly liable to the United States for the full cost to repair the damage to Webbers Falls Lock and Dam in an unknown amount, plus interest and costs.

CLAIM, COUNT TWO: NEGLIGENCE UNDER THE GENERAL MARITIME LAW

24. The United States incorporates by reference paragraphs 1 through 23 of this claim.

25. Bruce Oakley, Inc. and Johnston's Port 33 Inc. failed to act as reasonably prudent operators of the barges MTC 7255 and LTD 11140, and its crew had a duty to act as reasonably prudent mariners.

26. The incident on March 23, 2019, and the resulting damage to Webbers Falls Lock and Dam, were caused by the fault, negligence, and want of care on the part of the crew and operator of the M/V LEGACY and the barges MTC 7255 and LTD 11140.

27. The March 23, 2019 allision was in no way the fault of the United States.

28. Under the general maritime law Defendants are liable to the United States for the amount of the resulting damage plus interest and costs.

WHEREFORE, the United States respectfully prays:

1. That the United States be awarded judgment, without limitation, against Bruce Oakley, Inc., Johnston's Port 33 Inc., the M/V LEGACY *in rem*, the Barge MTC 7255

(a/k/a MTC 7256) *in rem*, and the Barge LTD 11140 (a/k/a TLD 11140) *in rem*, in an amount of to be determined, plus interests and costs; and

2. That the United States be granted such other and further relief as the Court may deem just and proper.

DATED: September 27, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 27, 2019, I electronically filed the forgoing Claim and Answer using the CM/ECF system which will send notifications of each filing(s) to all counsel of record, including the following:

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